

**IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

KEELY ROBERTS individually and as
parent and next friend of C.R. and L.R. and
JASON ROBERTS, individually and as a
parent and next of friend of C.R. and L.R.

Plaintiffs,

v.

SMITH & WESSON BRANDS, INC., et al.,

Defendants

Lead Case No. 22-LA-00000487

Consolidated with Case Nos.

22-LA-00000488; 22-LA-00000489;
22-LA-00000490; 22-LA-00000491;
22-LA-00000492; 22-LA-00000493;
22-LA-00000494; 22-LA-00000495;
22-LA-00000496; 22-LA-00000497;
22-LA-00000532; 24-LA-00000201;
24-LA-00000203; 24-LA-00000206;
24-LA-00000466; 24-LA-00000471;
24-LA-00000474; 24-LA-00000475;
24-LA-00000476; 24-LA-00000477;
24-LA-00000478; 24-LA-00000479;
24-LA-00000480; 24-LA-00000481

Hon. Jorge L. Ortiz

Defendant BudsGunShop.com, LLC (“Bud’s”) respectfully moves to dismiss the sixteen First Amended Complaints (“Complaints”) filed against it by Romanucci & Blandin, LLC, et al.:¹ (1) pursuant to Section 5/2-619 of the Illinois Code of Civil Procedure (“Code”) based on the immunity provided to Bud’s by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901-03 (“PLCAA”) (Argument Section I); and (2) pursuant to Section 5/2-615 of the Code for

¹ This motion to dismiss concerns the operative complaints filed against Bud’s in Case Nos. 24-LA-00000475, 24-LA-00000476, 22-LA-00000491, 24-LA-00000477, 24-LA-00000478, 24-LA-00000479, 22-LA-00000487, 22-LA-00000488, 22-LA-00000489, 22-LA-00000490, 22-LA-00000492, 22-LA-00000493, 22-LA-00000495, 22-LA-00000494, and 22-LA-00000496 filed by Romanucci & Blandin, LLC, et al. All sixteen of these complaints contain substantially similar allegations, so this motion will refer to the allegations set forth in the Amended Complaint in *Roberts v. Smith & Wesson, Inc.*, Case No. 22-LA-00000487.

failure to state a claim upon which relief can be granted based on Illinois law (Argument Sections II-IV).

SUMMARY OF THE ARGUMENT

Plaintiffs are persons who were injured or killed² during a criminal shooting on July 4, 2022 at a parade in Highland Park, Illinois and other persons who were present, but not physically injured, at the parade. In addition to suing the shooter, whose intentional criminal actions directly caused their injuries, Plaintiffs also sued Bud's, an out-of-state federally licensed firearms dealer, who shipped the firearm used by the shooter to another federally licensed firearms dealer located in Illinois. The firearm was ultimately transferred to the shooter by the in-state federally licensed firearms dealer. Although the Complaints concede that Bud's legally sold the firearm, Plaintiffs allege that Bud's should nonetheless be held liable because, after lawfully purchasing the firearm, the shooter brought it to a municipality where it was illegal for him to possess it. To be clear, it is undisputed that Bud's did not sell the firearm in a municipality where it was illegal to do so.

Plaintiffs' claims against Bud's must be immediately dismissed because they are barred by the immunity provided by the PLCAA, which prohibits a civil action from being filed in any state or federal court against a federally licensed firearms seller for damages and other relief resulting from the criminal or unlawful misuse of a firearm by a third party. Plaintiffs' claims against Bud's must also be dismissed pursuant to Illinois law because the Illinois Supreme Court has unanimously rejected the duty that Plaintiffs allege Bud's breached. Plaintiffs' claims for in-concert violation of municipal ordinances fail because the facts alleged do not establish that Bud's had reason to know that the shooter would illegally bring the firearm to a municipality where its possession was prohibited and actively assisted him to do so. Finally, Plaintiffs cannot establish

² For those individuals who were killed, Plaintiffs are the administrators of their estates.

causation because Bud's lawful sale of the firearm, which Bud's transferred to another federally licensed firearms dealer, was not the proximate cause of Plaintiffs' harm as a matter of law. The sole cause of Plaintiffs' harm was unequivocally the conduct of the criminal who committed the shooting.

BACKGROUND

According to the facts alleged in the Complaints, which are taken as true for purposes of this motion only, “[i]n or around January or February 2020,” Bud's, a federally licensed firearms dealer in Kentucky, received an order on its website for a semi-automatic Smith & Wesson M&P rifle (“Subject Rifle”) for a customer in Illinois, Robert Crimo, III (“Shooter”). Compl. ¶¶ 16-17, 25-26, 29, 124, 127-28, 246-47, 253, 261, 266-68. In accordance with the order, Bud's shipped the Subject Rifle to Red Dot Arms, Inc. (“Red Dot”), a federally licensed firearms dealer located in Lake County, Illinois, the state of the Shooter's residence, to complete the sale. *Id.* ¶¶ 16-17, 25-29, 124, 127-28, 246-47, 253, 261, 266-68. The Shooter had an Illinois Firearm Owners Identification (“FOID”) Card, “allowing him to purchase firearms in Illinois,” and Red Dot transferred the Subject Rifle “after conducting a background check and verifying [his] ID.” *Id.* ¶¶ 15-16, 122, 128. At the time the Shooter acquired the Subject Rifle, he resided in Highwood, Illinois, which had an ordinance stating that “No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine.” Highwood Ordinance § 6-7-2(A) (“Ordinance”). *Id.* ¶¶ 244, 244, 250, 264. The Subject Rifle was an “assault weapon” pursuant to the Ordinance. *Id.* ¶ 265. Importantly, the Ordinance does not, and cannot, prohibit anyone, including residents, from purchasing or possessing such a firearm outside of municipal limits.

More than two years after purchasing the Subject Rifle, on July 4, 2022, the Shooter criminally and intentionally discharged the Subject Rifle at persons attending an Independence Day parade in Highland Park, Illinois “with the intent to terrify, and to injure, maim and kill people at the parade,” ultimately killing seven people and injuring dozens of others. Compl. ¶¶ 296-98. Plaintiffs were attending the parade, and were injured or killed by the Shooter or, without being physically injured, witnessed the Shooting. *Id.* ¶¶ 2, 19. The Shooter was charged with numerous criminal charges, including first-degree murder. *Id.* ¶ 28.

Subsequent to the Shooting, Plaintiffs filed the Complaints, which, in combination, raise causes of action against Bud’s for negligence, in-concert liability for violation of the Ordinances, and intentional and negligent infliction of emotional distress. Compl. ¶¶ 238-57, 258-75, 310-27.³

STANDARD OF REVIEW

“A section 2–619 proceeding permits a dismissal after the trial court considers issues of law or easily proved issues of fact.” *Krilich v. Am. Nat. Bank & Tr. Co. of Chicago*, 334 Ill. App. 3d 563, 570 (2002). Bases for a section 2–619 dismissal include that “the claim asserted . . . is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” *Id.* (quoting 735 ILCS 5/2–619(a)(9)). “In ruling on a motion to dismiss under section 2–619, the trial court may consider pleadings, depositions, and affidavits.” *Id.* The term “affirmative matter” as used in Section 2–619(a)(9) includes a defense, such as immunity, that completely negates an alleged cause of action without contesting the “essential allegations of the plaintiff’s cause of action.”

³ For those individuals who were killed in the Shooting, Plaintiffs’ claims for negligence and in-concert liability for violation of the Ordinances are brought as both a survival action and for wrongful death. *See, e.g.*, Compl. in *Straus v. Smith & Wesson Brands, Inc.*, Case No. 22-LA-00000489, ¶¶ 269-91, 292-98, 299-319, 320-38.

Smith v. Waukegan Park Dist., 231 Ill. 2d 111, 121 (2008); *see also Krilich*, 334 Ill. App. 3d at 570.

“A section 2–615 motion to dismiss attacks the legal sufficiency of the complaint based upon defects appearing on the face of the complaint.” *Compton v. Country Mut. Ins. Co.*, 382 Ill. App. 3d 323, 325–26 (2008). “When reviewing the sufficiency of a complaint, the court must accept as true all well-pleaded facts and all reasonable inferences that can be drawn from those facts.” *Id.* (internal quotation marks omitted). But “[l]egal and factual conclusions, unsupported by allegations of fact, may be disregarded.” *Id.* “The critical inquiry is whether the allegations of the complaint are sufficient to establish a cause of action under which relief may be granted.” *Nw. Illinois Area Agency on Aging v. Basta*, 2022 IL App (2d) 210234, ¶ 31.

ARGUMENT

I. PLAINTIFFS’ CLAIMS AGAINST BUD’S MUST BE IMMEDIATELY DISMISSED PURSUANT TO THE PLCAA.

A. The Protection of Lawful Commerce in Arms Act was Passed to Provide Immunity to Firearm Sellers from Lawsuits Seeking to Hold Them Liable for the Criminal Misuse of Firearms.

The PLCAA prohibits the institution of a “qualified civil liability action” in any state or federal court. 15 U.S.C. § 7902(a). The PLCAA provides substantive immunity from being sued, not just a defense from liability. As such, whether its immunity applies must be decided at the earliest available opportunity. *In re Academy, Ltd.*, 625 S.W.3d 19, 35-36 (Tex. 2021) (unanimously granting petition for mandamus and holding that requiring defendant to present a defense on the merits to case barred by PLCAA would defeat substantive immunity it provides).

One of the stated purposes of the PLCAA is to “prohibit causes of action against distributors [and] dealers . . . for the harm solely caused by the criminal or unlawful misuse of

firearm[s] . . . by others when the product functioned as designed and intended.” *Id.* § 7901(b)(1).

Congress made a number of findings regarding the necessity for the PLCAA, including:

- Lawsuits have been commenced against manufacturers, distributors, dealers and importers of firearms that operate as designed and intended which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
- The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.
- Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

15 U.S.C. § 7901(a)(3)–(5). Based on its findings and the purposes stated therein, Congress enacted the PLCAA to prohibit qualified civil liability actions, such as this case, from being “brought in any Federal or State court.” *Id.* § 7902(a).

B. This Case is a Qualified Civil Liability Action.

With six limited exceptions, a “qualified civil liability action” under the PLCAA is a:

civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party

15 U.S.C. § 7903(5)(A). As explained in further detail below, these lawsuits are “qualified civil liability actions” prohibited by the PLCAA because they are civil proceedings brought by persons (Plaintiffs) against a seller (Bud’s) of a qualified product (the Subject Rifle) for damages and other

relief based on the criminal use of qualified products (the Shooting) by a third party (the Shooter).
See generally Compl.

Bud's is a seller for purposes of the PLCAA, which defines a "seller," with respect to a qualified product, in relevant part, as "a dealer (as defined in section 921(a)(11) of Title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of Title 18." 18 U.S.C. § 7903(2). Pursuant to 18 U.S.C. § 921(a)(11)(A), a "dealer" is defined as "any person engaged in the business⁴ of selling firearms at wholesale or retail." As alleged by Plaintiffs, Bud's is a "distributor of firearms and is federally licensed to deal in firearms" and, thus, is a seller for purposes of the PLCAA. Compl. ¶ 25.⁵

The PLCAA defines a "qualified product" as including a "firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code) . . . that has been shipped or transported in interstate or foreign commerce." 15 U.S.C. § 7903(4). Pursuant to 18 U.S.C. §§ 921(a)(3)(A), a firearm is defined as "any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." Pursuant to the allegations in the Complaints, the Subject Rifle is a firearm and therefore a qualified product pursuant to the terms of the PLCAA. *See, e.g.*, Compl. ¶ 26. Finally, the harm alleged in the Complaints was the result of criminal acts of a third party. Specifically, the Shooter intentionally shot at, and killed and injured, numerous persons, for which he has been criminally charged. *See*

⁴ "[E]ngaged in the business," relative to a seller, is defined as "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms." 18 U.S.C. § 921(a)(21)(C).

⁵ As Plaintiffs concede, Bud's is a step removed from the transfer of the Subject Rifle to the Shooter, as Bud's only shipped the Subject Rifle to Red Dot and did not transfer it to the Shooter. Compl. ¶¶ 16-17, 25-29, 124, 127-28, 246-47, 253, 261, 266-68. Thus, Plaintiffs' conclusory assertions as to Bud's reach an additional level of baselessness.

id. ¶ 28. *See, e.g.*, 720 ILCS 5/9-1 (“First degree murder”); 720 ILCS 5/12-3 (“Battery”). Consequently, Plaintiffs’ claims against Bud’s constitute a qualified civil liability action barred by the PLCAA.

C. Plaintiffs’ Claims are Barred Because No Exceptions to the PLCAA Apply.

There are six narrow categories of claims that the PLCAA does not bar because they are excluded from the definition of a qualified civil liability action. Based on the allegations in the Complaints, the only potentially relevant exception is the predicate exception set forth in 15 U.S.C. § 7903(5)(A)(iii). That provision excludes from the definition of a prohibited qualified civil liability action an “action in which a [seller of firearms] knowingly violated a state or federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought” 15 U.S.C. § 7903(5)(A)(iii). As set forth below, the predicate exception does not apply to Plaintiffs’ claims against Bud’s. As such, the PLCAA requires that they be dismissed in their entirety.

1. No Exception Applies to Plaintiffs’ Negligence and Emotional Distress Claims.

The PLCAA contains no exception for negligence claims, or claims for emotional distress, whether alleged to have been inflicted negligently or intentionally. *See* 15 U.S.C. § 7903(5)(A); *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009) (PLCAA preempts general negligence claims); *Prescott v. Slide Fire Sols., LP*, 341 F. Supp. 3d 1175, 1180, 1192 (D. Nev. 2018) (no exception applies to negligent infliction of emotional distress claim); *Jefferies v. D.C.*, 916 F. Supp. 2d 42, 47 (D.D.C. 2013) (suit involving negligence claim “explicitly and unequivocally prohibited”); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016) (“expressly preempts all general negligence actions”); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) (“general negligence exception . . . would make the negligence per se and negligent

entrustment exceptions a surplusage”); *Gilland v. Sportsmen’s Outpost, Inc.*, No. X04CV095032765S, 2011 WL 2479693, at *1, *24 (Conn. Super. Ct. May 26, 2011) (“PLCAA requires dismissal of” “negligent infliction of emotional distress”). Thus, Plaintiffs’ claims for negligence⁶ and intentional and negligent infliction of emotion distress must be dismissed because they are barred by the PLCAA.

2. No Exception Applies to Plaintiffs’ Claims for In-Concert Violation of the Ordinance.

Similarly, no exception applies to Plaintiffs’ claims against Bud’s for in-concert liability for violation of the Ordinance.⁷ Three reasons make clear that Plaintiffs’ in-concert claims do not fit within the predicate exception, each of which is independently sufficient to establish that PLCAA’s immunity applies and requires dismissal.

i. The Ordinance is Not a Statute.

First, the predicate exception applies only to violation of “a State or Federal Statute,” not a municipal ordinance or regulation, and thus cannot be satisfied based on an alleged violation of the Ordinance. 15 U.S.C. § 7903(5)(A)(iii); *City of Chicago v. Janssen Pharms., Inc.*, 2017 IL App (1st) 150870, ¶ 24 (holding that the “phrase ‘State law’ must be afforded its plain and ordinary meaning, which necessarily excludes municipal ordinances”). For that reason alone, the PLCAA bars Plaintiffs’ claims for in-concert violation of the Ordinance.

ii. The Ordinance Does Not Apply Where the Sale Occurred.

⁶ Survival and wrongful-death negligence claims are assessed under the same standard as any negligence claim. *See, e.g., Lenahan v. Univ. of Chicago*, 348 Ill. App. 3d 155 (2004). Thus, Plaintiffs’ negligence claims, even where brought as a survival action or for wrongful death are, simply, negligence claims, with the variation being the time period of injury at issue and who may maintain the cause of action. *See Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 34.

⁷ Like Plaintiffs’ negligence claims, Plaintiffs’ claims for in-concert violation of the Ordinance brought as both a survival action and based on wrongful death, hinge on the underlying substantive legal theory, which, as set forth above, is baseless.

Second, Plaintiffs have not alleged any facts that could establish that the Ordinance prohibited Bud's from transferring the Subject Rifle to another federally licensed firearms dealer, Red Dot. The Complaints incorrectly allege that it was "illegal for residents of Highwood" Illinois "to acquire and possess" the Subject Rifle. Compl. ¶ 127. But the Ordinance only prohibits "assault weapons" within the borders of Highland; it does not make it illegal for residents of that municipality to acquire and possess "assault weapons" in other areas. Highwood cannot regulate conduct outside its borders,⁸ and the Ordinance expressly recognizes that it applies only to conduct within the boundaries of the city. *See* Highland Park Ordinance No. 68-13, Preamble ("pursuant to the home rule powers of the City . . . the City Council desires . . . to prohibit the manufacture, sale, ownership, acquisition, or possession of assault weapons within the City").

Moreover, the Shooter—who Plaintiffs do not (and cannot) allege "acquired" the Subject Rifle in Highwood—could have, after acquiring the Subject Rifle, legally kept it at any number of locations outside of Highwood, such as at a hunting cabin, family member or friend's house, or a storage locker, in which case the Ordinance would not have been violated. *See, e.g., Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 504 (1984) (holding that the ordinance only outlaws the possession of handguns in the village and "permits everyone to possess a handgun that . . . is kept . . . outside village boundaries"). Accordingly, because Plaintiffs have failed to allege facts establishing that Bud's acted in concert to violate the Ordinance by selling the Subject Rifle to the

⁸ *See Hertz Corp. v. City of Chicago*, 2017 IL 119945, ¶ 14, (Ill. Sup. Ct.) ("Article VII, section 6(a), of the Illinois Constitution . . . allows home rule units to exercise" authority within their borders but that "home rule units may not extend their home rule powers, such as the taxing power, beyond their borders unless expressly authorized by the General Assembly"; municipality's local rules "violate[] the home rule article of our constitution [if] it has an extraterritorial effect and is therefore an improper exercise of the [municipality's] home rule powers").

Shooter and transferring it to Red Dot, Plaintiffs cannot rely on the Ordinance to satisfy the predicate exception relative to their claims against Bud's.

iii. Bud's Did Not Transfer the Subject Rifle to the Shooter.

Third, the predicate exception cannot apply to Plaintiffs' claims against Bud's for in-concert violation of the Ordinance because Bud's did not transfer the Subject Rifle to the Shooter. Bud's transferred the Subject Rifle to Red Dot, which, in turn, transferred it to the Shooter. Compl. ¶¶ 15-16, 122, 128. Bud's had no obligation to determine whether the Subject Rifle could be legally transferred to the Shooter. As explained in ATF Publication 5300.15, Federal Firearms Licensee Quick Reference and Best Practices Guide (Dec. 2021):

You [a federal firearms licensee] may sell a firearm to a person who does not reside in your State by shipping the firearm to a licensee in the buyer's State of residence. The buyer can then take possession of the firearm from the licensee in the buyer's State of residence. The licensee in the buyer's State of residence is responsible for the ATF Form 4473 and NICS background check.⁹

(Emphasis added).¹⁰ Accordingly, Plaintiffs' claims against Bud's for in-concert violation of the Ordinance is barred by the immunity provided by the PLCAA.

II. BUD'S OWED NO DUTY TO PLAINTIFFS.

This Court should also dismiss Plaintiffs' claims against Bud's for the independent reason that Bud's owes no duty to Plaintiffs. Plaintiffs allege that by selling the Subject Rifle, Bud's breached the "public[] right to be safe from violence." Compl. ¶ 18. There is no such duty under

⁹ The ATF Form 4473 is the form developed by the ATF to comply with the requirements of the GCA. It requires the purchaser to provide information on themselves such as their name, address, and date of birth, and "further lists all the factors disqualifying a person from gun ownership, and asks the would-be buyer whether any of them apply." *Abramski v. U.S.*, 573 U.S. 169, 172-73 (2014). "NICS" is the acronym for the background check conducted pursuant to the National Instant Criminal Background Check System to ensure that the purchaser is not prohibited from receiving a firearm based on the information on the Form 4473.

¹⁰ Available at <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide> (last visited Sept. 16, 2024).

Illinois law. In a lawsuit brought by the City of Chicago against members of the firearms industry, the Illinois Supreme Court unanimously held that there is no “public right to be free from the threat that members of the public may commit crimes against individuals,” separate and apart from the “individual right to be free from the threat of illegal conduct by others.” *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 371 (2004). The court explained that “[w]hether a duty of care exists is a question of law to be determined by the court” and that the firearms industry members “owe no duty to the city of Chicago or its residents to prevent their firearms from ending up in the hands of persons who use and possess them illegally.” *Id.* at 392 (internal quotations and citations omitted); *see also Linton v. Smith & Wesson, a Div. of Bangor Punta Corp.*, 127 Ill. App. 3d 676, 678 (1984) (firearm industry member did not owe duty to use “reasonable means to prevent the sale its handguns to persons who are likely to cause harm to the public”).¹¹

Accordingly, there is no basis under Illinois law for assigning any duty (or liability based on an alleged breach thereof) to Bud’s given the criminal conduct of the Shooter, and Plaintiffs’ claims against Bud’s should also be dismissed on that basis.

III. PLAINTIFFS’ IN-CONCERT CLAIMS ARE BASELESS.

Plaintiffs’ claims against Bud’s for alleged in-concert violation of the Ordinance must be dismissed for several additional reasons. First, the Ordinance does not provide a private cause of action. *See* Highwood Ordinance § 6-7-2. Second, the Ordinance should not be construed to

¹¹ Indeed, even without the very specific and clear ruling as relevant to the firearms industry, “[u]nder common law, the universally accepted rule. . . long adhered to by this court, is that a private person has no duty to act affirmatively to protect another from criminal attack by a third person absent a “special relationship” between the parties.” *Iseberg v. Gross*, 227 Ill. 2d 78, 87 (2007). Plaintiff has not alleged the existence of any such relationship with Bud’s, and none exists. *See also Vesely v. Armslist LLC*, 762 F.3d 661, 667 (7th Cir. 2014) (plaintiff “failed to allege any applicable duty that” a “website that facilitates the sale of guns between private owners” owed in connection with sale of firearm later used in shooting).

impliedly provide a private cause of action because it is not even a statute, and Plaintiffs seek to use it to regulate conduct outside of the boundaries of the enacting municipality in violation of the home rule. *See Abbasi ex rel. Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 396–97 (1999) (declining to rule on issue of whether “based on the home rule provisions of our state constitution, the City Code cannot support a private right of action” because the court could instead simply find that in this instance the “City Code does not support a private right of action”).

Third, Plaintiffs do not allege that Bud’s violated the Ordinance but, rather, purportedly acted in-concert with someone else in doing so. The concept of in-concert liability, which applies “[w]here there is concert of action between defendants,” and “one tortfeasor is held legally responsible for the tortious actions of another,” could not be farther afield from the facts alleged in this case. *Carollo v. Al Warren Oil Co.*, 355 Ill. App. 3d 172, 190 (2004). In-concert liability can only apply for “harm resulting to a third person from the tortious conduct of another” if the defendant:

- (a) does a tortious act in concert with the other or pursuant to a common design with him, or
- (b) knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
- (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

Fortae v. Holland, 334 Ill. App. 3d 705, 715 (2002). Plaintiffs’ vague allegations fall far short of what is required under Illinois law for an in-concert claim to proceed.

Plaintiffs do not plead any facts to support their baseless, conclusory allegations that Bud’s assisted and/or encouraged violation of the Ordinance, let alone that Bud’s so much as knew that a violation of the Ordinance (or any law), or the Shooting itself, would occur. Compl. ¶¶ 259-60. As explained above with respect to the PLCAA analysis, the Shooter could have lawfully acquired the Subject Rifle from Red Dot and kept it at another location without violating the Ordinance.

Accordingly, Plaintiffs come nowhere close to alleging facts to support their specious claims that Bud's acted "pursuant to a common design" with the Shooter's criminal conduct, or knowingly substantially assisted with the Shooter's criminal plans, or separately committed any tort of its own while substantially assisting the Shooter's crimes. *Fortae*, 334 Ill. App. 3d at 715. Thus, this Court should dismiss Plaintiffs' claims against Bud's for alleged in-concert violation of the Ordinance.

IV. PLAINTIFFS CANNOT ESTABLISH CAUSATION.

The Court should further dismiss all of Plaintiffs' claims against Bud's for lack of causation. Proximate cause may be decided as a matter of law. *Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 475 (2001) (Harrison, C.J. specially concurring); *see also City of Chicago*, 213 Ill. 2d at 395–96. Legal cause is established only if a defendant's conduct is "so closely tied to plaintiff's injury that he should be held legally responsible for it." *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2012) (citation omitted). "The question is one of policy—how far should a defendant's legal responsibility extend for conduct that did, in fact, cause the harm?" *City of Chicago*, 213 Ill. 2d at 394.

In *Young v. Bryco Arms*, 213 Ill. 2d 433 (2004), plaintiffs alleged that firearms manufacturers and dealers created a public nuisance by designing, marketing, and selling firearms that appeal to criminals. The Illinois Supreme Court explained, in "cases in which injury is caused by the intervening acts of third parties," a "condition-versus-cause analysis applies." *Id.* at 449. Thus, if the "defendant's conduct merely furnishes a condition by which injury is made possible, and a third person, acting independently, subsequently causes injury, the defendant's creation of the condition is not a proximate cause of the injury." *Id.* The court held that it is "unreasonable to expect defendants to foresee that the aggregate effect of the lawful manufacture and sale of

firearms will be the creation of a public nuisance in a distant city.” *Id.* at 455. “Therefore, defendants’ business practices merely create a condition that makes the eventual harm possible” and “[a]s such, defendants’ conduct cannot constitute a legal cause of the alleged nuisance.” *Id.*

The Illinois Supreme Court reached the same decision in the *City of Chicago* case, holding that the “alleged public nuisance is not so foreseeable to the dealer defendants that their conduct can be deemed a legal cause of a nuisance that is the result of the aggregate of the criminal acts of many individuals over whom they have no control.” 213 Ill. 2d at 413; *see also id.* at 410 (firearm industry members’ “lawful commercial activity, having been followed by harm to person and property caused directly and principally by the criminal activity of intervening third parties, may not be considered a proximate cause of such harm”) (quotations omitted); *Martin v. Harrington & Richardson, Inc.*, 743 F.2d 1200, 1205–06 (7th Cir. 1984) (“no support for plaintiffs’ claim in Illinois law” concerning liability for “manufacturing and selling handguns” used in crimes).

This reasoning applies equally to Plaintiffs’ claims against Bud’s, which lawfully transferred the Subject Rifle to another federally licensed firearms dealer. To hold Bud’s liable for the criminal actions of the Shooter would contravene basic notions of justice and fundamental fairness that cannot be squared with the well-established law set forth above limiting proximate causation based on superseding, intervening acts of criminals. Accordingly, this Court should dismiss Plaintiffs’ claims against Bud’s for lack of causation.

CONCLUSION

For the foregoing reasons, Bud’s respectfully requests that this Court grant the motion, dismiss the Complaints and all claims therein against Bud’s with prejudice, and grant such other relief as it deems just and proper.

Dated: September 16, 2024

Respectfully submitted,

By: /s/ Bruce W. Lyon
Bruce W. Lyon (ARDC NO. 6187697)
LaBARGE CAMPBELL LYON & KAHAN, LLC
200 W. Jackson Blvd., Suite 2050
Chicago, IL 60606
Telephone: (312) 580-9010
Email: blyon@lcllaw.com

-and-

Christopher Renzulli (ARDC No. 6327882)
Scott C. Allan (ARDC No. 6333723)
William J. Diggs (*pro hac vice* to be filed)
RENZULLI LAW FIRM, LLP
One North Broadway, Suite 1005
White Plains, New York 10601
Telephone: (914) 285-0700
Email: crenzulli@renzullilaw.com
sallan@renzullilaw.com
wdiggs@renzullilaw.com